

Docket No. 030782-4
Application No. 10/801,039
Page 7

AMENDMENTS TO THE DRAWINGS:

Please replace the drawing sheet including Figures 2A and 2B with the attached Replacement Sheet including Figures 2A and 2B. In Figure 2A, the reference number "60" has been changed to reference number "50" to correct an inadvertent typographical error and to be consistent with the labeling of a similar element in Figures 1A and 1B.

Attachment: one (1) Replacement Sheet

W699199.1

Docket No. 030782-4
Application No. 10/801,039
Page 8

REMARKS

The Examiner's Office Action of December 19, 2006 has been received and carefully considered. Prior to this amendment, claims 2-13 and 30-47 were pending in the application. By this amendment, claims 5, 9, 11, 32, 37, 38, 40, 43-45 and 47 are amended (present claims 44 and 45 being renumbered as such from 43 and 44, respectively). Accordingly, claims 2-13 and 30-47 remain pending.

During a review of the application disclosure, Applicant noted a typographical error in Figure 2A. More particularly, the reference number indicated feeding tube "50" was mislabeled as "60." The attached Replacement Sheet includes a corrected version of Figure 2A in which the reference number for the feeding tube is indicated by the number "50." The Examiner is requested to approve this drawing change.

The undersigned notes with appreciation the courtesies extended throughout the personal interview conducted with the Examiner on January 10, 2006. As indicated on page 3 of the Interview Summary dated January 10, 2006, the Examiner and the undersigned agreed that amending the claims to recite a lack of a closure mechanism such as the closure mechanism described in the Hazard patent (U.S. Patent No. 3,977,557) (shown in Figure 7 and described in column 5, line 65 to column 6, line 5) would overcome all rejections based on Hazard. To this end, claim 9 is amended to recite that a feed dispenser includes "at least one conduit extending therefrom" and that "said feeding assembly does not include any mechanism for closing a pathway for the nourishment at an interface of the at least one conduit and the feeding assembly." Support for these features are found throughout the original disclosure, for example, in Figures 2A, 2B, 3, 5A, 5B and 6, and the description thereof in the specification, starting at paragraph 0035.

It is to be noted that the Interview Summary also states, "Also argued was the obviousness of combining any such structure in the bird feeder art." It is believed the Examiner actually intended "obviousness" to be "non-obviousness," as the undersigned pointed out that there is no motivation for combining the locking mechanism described in the Hazard patent in the bird feeder assembly such that one of ordinary skill in the art would arrive at Applicant's invention, as now claimed.

W699199.1

Docket No. 030782-4
Application No. 10/801,039
Page 9

Also during the interview, the undersigned pointed out that the objection to claim 9, at page 3 of the Action, is based on an unreasonable interpretation of claim term "unreleasably engage," which is defined, for example, at paragraph 0051 of the specification. The Examiner stated that the objection would be vacated. (The interview summary also inadvertently refers a rejection under 112, second paragraph rather than an objection, which the undersigned believes resulted from the Examiner and the undersigned being subject to time constraints near the end of the interview.) For at least these reasons, it is believed the objection to claim 9 should be withdrawn.

The Action also includes a rejection of claims 37-39 under 35 U.S.C. § 112, first paragraph, because the specification fails to reasonably provide enablement for a feeding reservoir comprising a threaded screw cap and having at least one conduit disposed therein. It is respectfully submitted, however, that the recitation "feeding reservoir" was an obvious unintentional error, and one of ordinary skill in the art would have recognized it as such. Accordingly, Applicants believe that an objection rather than a rejection under 35 U.S.C. § 112, first paragraph, would have been more appropriate to point out this error to applicant. In any event, claim 37 and 38 are amended to correct the inconsistencies noted by the Examiner. It is respectfully submitted that the rejection has been rendered moot by these amendments.

Sections 19-24, at page 5 of the Office Action, include a rejection of claims 5, 11, 12 and 30-41 for being indefinite. In response, claims 5, 11, 33, 37, 38, 40 and 41 are amended, above, to provide proper antecedent basis for each of the items as pointed out by the Examiner. It is respectfully submitted that these amendments fully address the Examiner's concerns expressed on page 5 of the Office Action. As such, Applicant believes the rejection under Section 112, second paragraph should be withdrawn.

Starting on page 6, the Office Action includes a rejection of claims 2-6, 9-12, 30-34, 37-41 and 47 under 35 U.S.C. § 102(b) as being anticipated by the Hazard patent, and a rejection of claim 13 under 35 U.S.C. § 103, as being obvious over Hazard, either taken alone or in combination with Williams (U.S. Patent Application Publication No. US 2003/0168423). However, as pointed out above, the Examiner agreed that amending claim 9 to include a limitation excluding a closure mechanism such as Hazard's would overcome the rejections based on this document. As Applicant has amended claim 9 to recite *inter alia* that

W699199.J

Docket No. 030782-4
Application No. 10/801,039
Page 10

"said feeding assembly does not include any mechanism for closing a pathway for the nourishment at an interface of the at least one conduit and the feeding assembly," it is respectfully submitted that the Hazard patent fails to teach or suggest the claimed combination of features, whether taken alone or in any combination with the Williams publication. Accordingly, claim 9 is considered patentable.

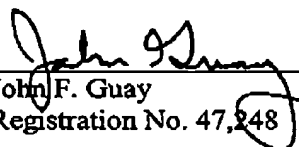
Claims 2-6, 10-13, and 31-47 depend either directly or indirectly from claim 9, and are therefore allowable for at least the above reasons, and further for the additional features recited.

It is believed that the undersigned's recollection of issues discussed and agreed to during the January 10, 2006 interview, as summarized above, is accurate. If the Examiner disagrees, he is requested to further clarify his recollection of this meeting for the record.

Finally, on page 3 of the Office Action, claims 7, 8, 35, 36 and 42-46 are withdrawn by the Examiner for allegedly being drawn to non-elected species. However, it is respectfully submitted that all withdrawn claims should be rejoined and allowed, because each of these claims depends from allowable claim 9.

Based on the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and prompt notification of the same is earnestly sought. If the Examiner believes any residual issues exist, he is invited to contact the undersigned at the number provided below to resolve any such issues.

Respectfully submitted,


John F. Guay
Registration No. 47,248

NIXON PEABODY LLP
Suite 900, 401 9th Street, N.W.
Washington, D.C. 20004-2128
(202) 585-8298

W699199.1